


PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number:

10663-013001

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.

April 4, 2006

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Signature

Meredith A. Finch

Typed or Printed Name of Person Signing Certificate

Application Number

09/779,426

Filed

February 8, 2001

First Named Inventor

Daniel L. Roth et al

Art Unit

2655

Examiner

Huyen X. Vo

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
 is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record 56,569
 (Reg. No.)

☐ attorney or agent acting under 37 CFR 1.34.
 Registration number if acting under 37 CFR 1.34

Signature

 Elliott J. Mason, III
 Typed or printed name

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 April 4, 2006
 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 form are submitted.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Daniel L. Roth et al

Art Unit : 2655

Serial No. : 09/779,426

Examiner : Huyen X. Vo

Filed : February 8, 2001

Title : FEEDBACK FOR UNRECOGNIZED SPEECH

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 - New Pre-Appeal Brief Conference Pilot Program (extended January 10, 2006), a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1-9 and 17-39 are pending, of which claims 1, 17, 24, 28, and 34 are independent claims. All the claims stand rejected as follows:

- Claims 1-4, 17-18, 28, 34-35, and 38-39 stand rejected under 102(e) as being anticipated by Curry et al. (Pat. 6,493,669).
- Claims 5-8 and 19-22 stand rejected under 103(a) over Curry in view of Epstein (Pat. 5,465,317).
- Claims 24-27 and 36-37 stand rejected under 103(a) over Curry.
- Claims 9 and 23 stand rejected under 103(a) over Curry in view of Epstein further in view of Gammel (Pat. 5,832,429).
- Claims 29-32 stand rejected over Curry in view of Franz et al. (Pat. 6,278,968).
- Claim 33 stands rejected over Curry in view of Gabai et al. (Pat. 6,160,986).

Applicants specifically request the panel to review the following issues:

1. The Examiner has made a clear error in providing a factual basis to support a *prima facie* rejection of claims 1-9 and 17-33.

2. The Examiner has made a clear error in providing a factual basis to support a *prima facie* rejection of claims 34-39.

Each of these issues is discussed in greater detail below. Applicants reserve the right to expand these issues and/or present new issues when filing their appeal brief, including issues raised in previous replies filed on August 5, 2004 and December 13, 2004, each of which is incorporated herein by reference.

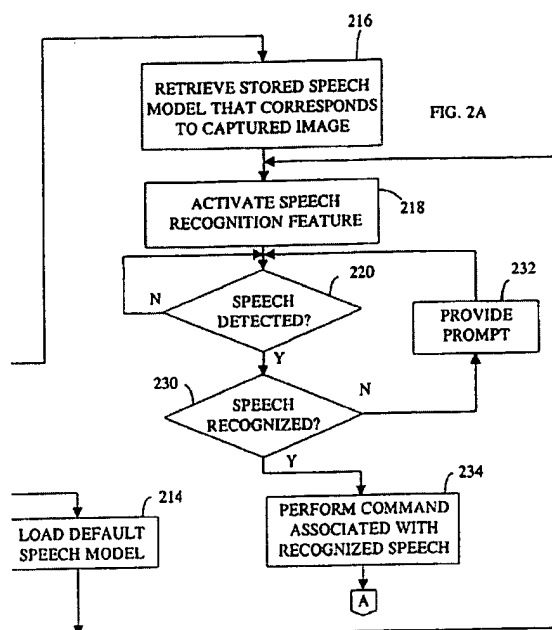
Discussion of Issues:

1. The Examiner has made a clear error in providing a factual basis to support a *prima facie* rejection of claims 1-9 and 17-33.

The Examiner has made a clear error in providing a factual basis to support the 35 USC 102(e) rejection of claims 1-4, 17-18, 28. In view of this error, Curry fails to disclose all limitations of independent claim 1, 17, 24, or 28. Thus, Curry fails to support a *prima facie* 35 USC 102(e) rejection of claims 1-4, 17-18, and 28, or a *prima facie* 35 USC 103(a) rejection of claims 5-9, 19-27, and 29-33.

Claims 1, 17, 24, and 28 recite “[comparing the] user’s speech command to a plurality of recognized speech commands available in a speech library to determine if said user’s speech command is unrecognized speech, as opposed to non-speech.”

With respect to this limitation recited in claims 1, 17, 24, and 28, the Office Action (mailed December 5, 2005) cites col. 3, line 31-36 of Curry to support the Examiner’s assertion that Curry discloses this limitation. It appears the Examiner may have meant to refer to col. 4, lines 31-36, which refers to step 220 labeled “SPEECH DETECTED?” and step 230 labeled “SPEECH RECOGNIZED?” as shown in a portion of FIG. 2A reproduced below.



On page 2 (paragraph 2) of the Office Action, the Examiner states “Curry et al. teach a speech detector (element 220 in figure 2A) for determining whether the input signal is speech or non-speech before the recognition step. The speech portion of the signal is then passed to the speech recognizer to determine if the speech portion is recognizable or unrecognizable. The legal terminology ‘comprising’ in the preamble of the base claim 1 indicates that the system may include an extra step such as recognizing speech as opposed to unrecognizable speech. The steps 220, 230, and 232 together recognize both unrecognized speech as opposed to non-speech and recognized speech as opposed to unrecognized speech. Thus, previous ground of rejection is maintained.”

Even if, for purposes of this pre-appeal brief, the Examiner’s interpretation of the prior art and claim 1 are assumed to be correct (which Applicants do not concede), that Curry does teach “determining whether the input signal is speech or non-speech before the recognition step,” as the Examiner puts forth, there remains additional claim language that is not addressed by the Examiner. The Examiner has not provided any factual basis for asserting that Curry discloses “comparing the user’s speech command to a plurality of recognized speech commands available in a speech library to determine if said user’s speech command is unrecognized speech, as opposed to non-speech.” To the contrary, the Examiner states that it is the “speech detector” which performs this determining step and does not even attempt to provide any factual basis that the speech detector compares the speech command to anything, much less, to “a plurality of recognized speech commands available in a speech library” to perform this determining step.

Applicants submit that the Examiner has made a clear error in rejecting claims 1-9 and 17-33, and that this error is not a matter of interpretation of the claims or prior art teachings, but instead a matter of the existence of a valid factual basis for asserting that the prior art discloses all the claim limitations. For example, this error remains even if the Examiner's interpretation of the prior art and claim 1 are assumed to be correct.

2. The Examiner has made a clear error in providing a factual basis to support a *prima facie* rejection of claims 34-39.

The Examiner has made a clear error in providing a factual basis to support the 35 USC 102(e) rejection of claims 34-35, and 38-39. In view of this error, Curry fails to disclose all limitations of independent claim 34. Thus, Curry fails to support a *prima facie* 35 USC 102(e) rejection of claims 34-35, and 38-39, or a *prima facie* 35 USC 103(a) rejection of claims 36-37.

Claim 34 recites "using speech models to identify the audio signal as belonging to one of three or more categories including (a) recognized speech, (b) unrecognized speech, and (c) non-speech."

With respect to this limitation of claim 34, the Office Action cites "the operation of elements 218-234 in figure 2A" to support the Examiner's assertion that Curry discloses this limitation. However, step 218 (labeled "ACTIVATE SPEECH RECOGNITION FEATURE"), step 220 (labeled "SPEECH DETECTED?"), step 230 (labeled "SPEECH RECOGNIZED?"), and step 234 (labeled "PERFORM COMMAND ASSOCIATED WITH RECOGNIZED SPEECH") do not provide a valid factual basis to support this assertion under any consistent interpretation of the claim and the prior art, as explained below.

Curry describes a system in which step 220 is true when a "processor 102" receives a signal from an "audio input device 118 (e.g., a microphone)," a "filter/amplifier module 116," and an "A/D converter 114." Thus, it appears that step 220 detects "speech" as well as other sounds that trigger the system. However, the following clear error in providing a valid factual basis for the rejection persists regardless of the interpretation of the claims and prior art, and in particular the error exists even if, for purposes of this pre-appeal brief, we assume that step 220 detects a speech signal and not a non-speech signal.

The Examiner has essentially put forth a first step (220) of identifying the audio signal as belonging to (a + b) "speech" versus (c) "non-speech" without any showing that this step uses

speech models, and a subsequent independent step (230) of identifying the "speech" audio signal as belonging to (a) recognized speech versus (b) unrecognized speech.

Thus, it is not a matter of interpretation, but a matter of fact that Curry does not provide a possibility for identifying an audio signal as belonging to one of three or more categories including (a) recognized speech, (b) unrecognized speech, and (c) non-speech using speech models to so categorize the audio signal, as required by the claim. In particular, Curry does not enable the possibility of identifying an audio signal as belonging to the category "non-speech" using the speech models.

Even under an interpretation in which non-speech is not detected by step 220, if non-speech is provided Curry's system simply repeats step 220: "Next, in step 220, if speech is detected, control transfers to step 230. Otherwise, control loops on step 220 until speech is detected (while routine 200 is active)." (col. 4, lines 30-32). "Not detecting speech" is not, under any possible interpretation, using speech models to identify the audio signal as non-speech.

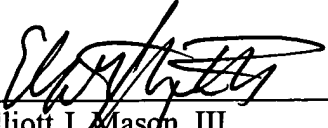
Under an interpretation in which non-speech is detected by step 220, if non-speech is provided, Curry's system does not distinguish between unrecognized speech and non-speech.

Applicants submit that the Examiner has made a clear error in rejecting claims 34-39, and that this error is not a matter of interpretation of the claims or prior art teachings, but instead a matter of the existence of a valid factual basis for asserting that the prior art discloses all the claim limitations.

Please apply any charges or credits to deposit account 06-1050, referencing Attorney's Docket No. 10663-013001.

Respectfully submitted,

Date: 4-4-06



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